

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Tax exemption for public housing

BILL NUMBER: SB 86; HB 514 (Identical); SB 1117, HB 886 (Identical)

INTRODUCED BY: SB 86 by Chun Oakland, Dela Cruz, Galuteria, Ruderman and 2 Democrats; HB 514 by Jordan, Ito, Oshiro, Say, Yamashita; SB 1117 by Kim by request
HB 886 by Souki by request

BRIEF SUMMARY: Moves the language delineating the state tax exemption on income and obligations from HRS section 201H-37 into HRS chapter 356D.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: SB 1117/HB 886 are administration measures submitted by the department of human services - HMS-21(13). These measures would move the state income tax and obligation exemption for public housing agencies from the jurisdiction of the Hawaii housing and finance development corporation (HHFDC) to the Hawaii public housing authority (HPHA). Act 196, SLH 2005, required the HHFDC to prepare an implementation plan to reorganize the state's housing functions and Act 180, SLH 2006, created two separate housing agencies - the HHFDC and the HPHA.

On the surface, this proposal would seem to align the income tax exemption and obligation exemption for "public housing agencies" and place it under the chapter establishing the state's public housing agency called the "Hawaii Public Housing Authority." However, it should be remembered that this exemption is established under federal law as part of Section 3(6) of the United States Housing Act of 1937. A review of that law and a discussion with local HUD officials revealed that a "public housing agency" does not necessarily have to be a state or local government agency, that, in fact, a "public housing agency" can be an organization that meets the HUD guidelines in providing safe, decent affordable housing to the low-income population of any community.

Should this proposal be adopted, then the exemption provided for any "public housing agency" would only apply to the state's Hawaii Public Housing Authority. That would restrict any future possibility of a private for-profit or nonprofit organization from producing affordable housing to the disadvantaged in the community. The income tax exemption and obligation exemption authority should remain under the oversight of the Hawaii Housing and Finance Development Corporation which already oversees the other financing tools available to provide subsidized housing in Hawaii including the low-income housing tax credit program and the issuance of the federal private activity bonds used for housing.

Digested 1/24/13



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING

March 11, 2013 at 9:30 a.m.
State Capitol, Room 329

In consideration of
S.B. 86
RELATING TO PUBLIC HOUSING.

The HHFDC **supports S.B. 86 with a requested amendment.** While HHFDC supports this Hawaii Public Housing Authority housekeeping measure, we are concerned about potential issues raised in the Tax Foundation of Hawaii's testimony on the bill.

The Tax Foundation's testimony raised concerns that deleting the language currently contained in section 201H-37, HRS, and moving it to the Hawaii Public Housing Authority's HRS Chapter, Chapter 356D, HRS, may unintentionally impact the tax liability for non-profit or for-profit low income housing organizations who may meet the Federal definition of a "public housing agency." HHFDC has discussed this matter with the U.S. Department of Housing and Urban Development's local office and we have not been able to rule out these concerns. Further legal research may be needed to be certain of all of the potential implications.

Therefore, in order to avoid the possibility of unintentional harm to any low income housing organizations, HHFDC respectfully requests that the Committee amend S.B. 86 by **deleting Section 2 of the bill.**

Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

March 11, 2013 9:30 A.M.
Room 329, Hawaii State Capitol

In consideration of

Senate Bill 86
Relating to Public Housing

Honorable Chair Cabanilla, and Members of the House Committee on Housing, thank you for the opportunity to provide you with comments regarding Senate Bill (S.B.) 86 relating to public housing.

The Hawaii Public Housing Authority (HPHA) supports the enactment of this measure, as is, which would move the State income tax and obligations exemption for public housing agencies from the laws governing the Hawaii Housing Finance and Development Corporation (HHFDC) to the laws governing the HPHA.

Section 11 of the Housing Act of 1937, as amended (42 U.S.C. § 1437i) provides for public housing agencies (PHAs) to issue obligations secured by a variety of U.S. Department of Housing and Urban Development (HUD) funds to finance the development of low-income housing projects. It further provides that any such obligations, including interest thereon, that are issued by a PHA, and any income derived by the PHA from such projects, are exempt from all taxation imposed by the United States. Section 201H-37, Hawaii Revised Statutes (HRS), provides that such obligations and income should also be exempt from all taxation imposed by the State.

However, the statute is misplaced and was left in chapter 201H when the HHFDC and HPHA bifurcated on July 5, 2005 with Act 196. As the sole PHA in the State of Hawaii, any such statutory provision relating to PHA financing obligations should be provided in the HPHA's chapter 356D, HRS. As such, this proposal is a housekeeping measure to move this statute to the correct chapter.

Furthermore, after hearing the concerns of the Tax Foundation, the HPHA submitted testimony in support of creating the statutory provision in HPHA's chapter 356D and also leaving the statute in 201H-37, HRS in House Bill 514, House Draft 2. However, the HPHA has discussed this issue with the Attorney General and believes that the Tax Foundation's concern is invalid. The Attorney General has confirmed that the HPHA is the exclusive Statewide public housing agency to administer, develop and manage low-income public housing projects and programs on behalf of HUD or the State of Hawaii, and would like to respectfully request to have S.B. 86 pass as is.

The HPHA appreciates the opportunity to provide the House Committee on Housing with the agency's position regarding S.B. 86. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.

Attachment: Attorney General Opinion Letter

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

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RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

June 4, 2012

Mr. Hakim Ouansafi
Executive Director
Hawai'i Public Housing Authority
1002 North School Street
Honolulu, Hawaii, 96817

RE: Whether the Hawai'i Public Housing Authority ("HPHA") is the Exclusive Public Housing Agency ("PHA") with Statewide Jurisdiction for the State of Hawai'i

Dear Director Ouansafi:

You have requested our advice whether the Hawai'i Public Housing Authority ("HPHA") is the duly established and exclusive entity designated by statute to act as a Statewide Public Housing Agency (PHA) for the State of Hawai'i. You have conversely asked whether an "out-of-State" PHA may serve as the designated PHA for the State of Hawai'i. You have asked for our advice to these questions because it is required to be submitted with your application for the Section 8 Performance Based Contracts Administration ("PBCA") program pursuant to the "Notice of Funding Availability" ("NOFA") issued by the U.S. Department of Housing and Urban Development on or about March 15, 2012. The deadline for your PBCA submission is June 11, 2012

We answer your questions as follows: pursuant to chapter 356D, Hawai'i Revised Statutes ("Haw. Rev. Stat."), HPHA is established as the exclusive Statewide public housing agency to administer, develop and manage low-income public housing projects and programs, including the Section 8 program, on behalf HUD or the State of Hawai'i. Accordingly, an "out-of-State" housing authority could not legally serve or be designated as the exclusive PHA for Hawai'i with Statewide jurisdiction. Chapter 356D, Haw. Rev. Stat., does not allow or authorize out-of State PHA's essentially to cross State lines and perform the duties and powers of the HPHA relating to low-income public housing on behalf of the State of Hawai'i.

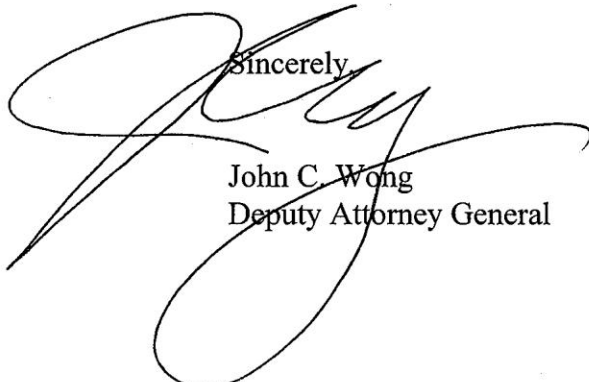
The general powers of HPHA are set forth in section 356-4D, Haw. Rev. Stat., and include the power to "make and execute all contracts and instruments necessary and convenient

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Mr. Hakim Ouansafi
June 4, 2012

to the exercise of its powers.” Although section 356D-9, Haw. Rev. Stat., authorizes HPHA to enter into cooperative agreements with other government agencies,” this section does not mean that an out-of-State PHA may unilaterally be designated to take control over the statutory duties and powers of HPHA. Clearly, HPHA may consent to cooperative, contractual arrangements with other governmental agencies and PHA’s. These cooperative arrangements with other governmental agencies might include, among other things, obtaining the aid and cooperation in “the planning, construction, and operation of public housing projects”. Section 356D9-(b)(6), Haw. Rev. Stat. However, there is nothing in chapter 356D, Haw. Rev. Stat. that allows any out-of State PHA to unilaterally undertake or perform the powers of HPHA.

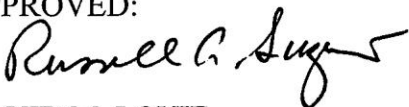
Simply put, HPHA is the exclusive Statewide Public Housing Agency for the State of Hawai’i and no out-of State PHA may presume to take over or succeed to HPHA’s statutory powers and duties as established under chapter 356D, Haw. Rev. Stat.

Sincerely,



John C. Wong
Deputy Attorney General

APPROVED:



DAVID M. LOUIE
Attorney General